

RECEIVED
IN LAKE CHARLES, LA

OCT - 9 2008

ROBERT H. SHEMPELL, CLERK
WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA : DOCKET NO. 2:06 CR 20022
VS. : JUDGE MINALDI
GAYLAND BRUCE HEWITT : MAGISTRATE JUDGE KAY

MEMORANDUM ORDER


Presently before the court is a “Motion to Withdraw Voluntarily as Judge” [doc. 46]. In essence, the defendant is asking the undersigned to recuse herself from further proceedings in this case so that “the reality and appearance of impartiality can be preserved.”¹

Both recusal statutes, 28 U.S.C. §§ 144 and 455, require a “proceeding” pending before the judge sought to be recused. The term “proceeding” implies “the judge's participation in decisions affecting the substantive rights of the litigants to an actual case or controversy.” *United States v. Sciarra*, 851 F.2d 621, 635 (3d Cir.1988). No proceeding is currently pending before this court. The defendant is filing this motion in anticipation of filing a §2255 motion. As to the contemplated section 2255 motion, the motion to recuse is untimely because it is premature. *United States v. Bowens*, 2008 WL 4156851, 1 (5th Cir., 2008). As such, this court lacks jurisdiction to hear the motion. *See United States v. Day*, 215 F. App'x 975 (11th Cir.2007)(holding that the district judge

¹ Motion, page 1.

lacked power to hear a motion to recuse filed after judgment but before a habeas petition was filed).

Lake Charles, Louisiana, this 9 day of October, 2008.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE